Disclosure Statement Projections (Lawless)

The LoPucki Bankruptcy Research Database (BRD) represents one of the longest-running empirical studies in the area of bankruptcy, having its origins in Lynn’s pathbreaking work with Bill Whitford on the bankruptcies of large, publicly traded companies. As Elizabeth Warren and I wrote in our recent chapter for the *Oxford Handbook of Empirical Legal Research*: “The LoPucki and Whitford studies were influential, and their success would legitimate empirical studies of corporate bankruptcy as an area of scholarly inquiry in the legal academy.” Many of us would not be participating in this conference but for the example that Lynn and Bill set for us.

Empirically minded scholars should revisit update their own and the work of others. The world is always changing, and empirical results from one era may not carry over to the next. I can think of no better way to honor Lynn’s work in assembling the BRD other than by using it. Specifically, I propose to examine some previous work of my own: Brian L. Betker, Stephen P. Ferris, and Robert M. Lawless, “‘Warm with Sunny Skies’: Disclosure Statement Forecasts,” 73 *Am. Bank. L.J.* 809 (1999). Based on data going back as far as 1983, we found significant forecast error in the financial projections of publicly traded companies in chapter 11. Both annual pretax and post-tax incomes were systematically overstated in the four years following bankruptcy.

The financial projections form the basis for the outcomes in chapter 11, at least in those cases where the debtor expects to emerge with continued operations. A chapter 11 case is nothing more than a corporate valuation, usually negotiated against the threat of a judicial valuation under the guise of the cramdown. The value placed on the company determines everything: who is in and out of the money, the value of distributions such as warrants and stock, and the belief that company will be able to function as a going concern in the future. The outcomes of formal legal rules such as the feasibility test and the best interests test also rest on valuation of the company. Indeed, it is somewhat curious that legal scholars have ceded scrutiny of these financial projections to insolvency specialists in accounting and finance.

Because the BRD has the largest publicly traded company bankruptcies, it contains the companies most likely to emerge from chapter 11 with financial projections for continued operations. Also, many of the BRD variables provide important information about forum-shopping, a debate that had not fully developed at the time of our original article. Revisiting the financial projection will perhaps allow some examination of the mechanisms by which an emerging chapter 11 fails.

In thinking about the challenges to the project, one might wonder first about whether disclosure statements are still an important issue to study in a world where the modal chapter 11 outcome is a 363 sale. In addition, our “Warm With Sunny Skies” article found that forecast errors were greater for smaller firms which suggests the BRD sample may underestimate the extent of the error. Data gathering issues also are an issue: although Compustat provides post-bankruptcy performance, the disclosure statements have to be hand-collected and hand-coded.